

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON SENATE BILL 432

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on April 17, 2001
at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Rep. Joe McKenney, Chairman (D)
Sen. Dan Harrington (D)
Rep. Jeff Mangan (R)
Sen. Mike Taylor (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Gordon Higgins, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Posted: SB 432, 4/17/2001

SB 432

SEN. MIKE TAYLOR explained the amendments **EXHIBIT(frs86sb0432a01)**
SBO43201.agp. He said Amendment 1 dealt with **SEN. GREG**
JERGESON'S concerns about the constitutionality of fixtures being
built on state-owned property. He said **Mae Nan Ellingson**, Bond
Counsel, concurred with this amendment. He also added the bill
was originally drafted for the Venture Star Project and that
project may be back in the picture.

SEN. DAN HARRINGTON said he was still concerned about the Little
Davis Bacon Act (LDBA) with regard to this bill. **SEN. TAYLOR**
said the LDBA goes with the procurement issue and that is going

to be taken out of this bill. He said this bill would deal with the aerospace industry, which would pay more than what is called for in the Little Davis Bacon Act.

SEN. JERGESON said there was an amendment offered by **SEN. VICKI COCCHIARELLA EXHIBIT (frs86sb0432a02) SB043203.agh**. He said there are two fundamental issues to consider - one was the constitutional issue and the other was the procurement issue.

SEN. JOHN BOHLINGER asked if he was satisfied with the language of the amendments. **SEN. JERGESON** said he believed the language dealt with his constitutional concerns. He said he would have a hard time explaining to his farmers why they would not get the same breaks as those in the aerospace industry - buying equipment and leasing it at below market value.

SEN. HARRINGTON asked why we were offering the equipment at below fair market value, and why would we want to keep the salaries in the low range. **SEN. TAYLOR** said this piece of legislation is needed to remain competitive with other states.

SEN. BOHLINGER asked why we must keep something below the fair market value as an incentive. **Andy Poole, Department of Commerce (DOC)**, said the aerospace projects the DOC has dealt with, have all been competing with other states. That is why it is important to offer an incentive to these companies, in order to get them to consider moving to Montana. He felt if we don't have incentives like those in this bill, it will be difficult for Montana to compete with other states.

SEN. BOHLINGER asked how much revenue was lost, by not having the Bigelow project locate in our state. **Mr. Poole** said there would have been a capital investment of \$5 million dollars. **SEN. TAYLOR** added the amount was \$500 million. **Mr. Poole** said this project would have employed upwards of 200 people, most of these jobs would have been engineers and scientists, whose salary would have ranged from \$60,000 to \$100,000 a year.

SEN. TAYLOR said another reason we lost the Bigelow project, was because of the procurement process in this state. We do not have a procurement process just for aerospace and the procurement process we do have, is too cumbersome.

SEN. BOHLINGER said it is clear there are certain industries that can pay big salaries. Unfortunately, farming and ranching are not part of that mix.

REP. JOE MCKENNEY asked why Amendment 3 of **SB043201.agp** adjusted the definition of equipment. **Mr. Higgins** said the reason for Amendment 3, was you need to have a definition of fixed equipment that is on state owned land.

SEN. BOHLINGER said that amendment was drafted by **Mr. Petesch**. He added he had a copy of a telephone message for **SEN. TAYLOR** from **Mike Gold, Patten and Boggs Lawfirm**, in Washington DC. He said **Mr. Gold** had spoken with **Mae Nan Ellingson** and feels this Amendment **SB043201.agp** was necessary to make this bill work.

SEN. BOHLINGER added we need to trust the judgement of the people who do this work.

Motion: **SEN. TAYLOR MOVED SB 432 BE AMENDED SB043201.agp.**

REP. WHITAKER wondered if this would affect Malstrom Air Force Base and other federally owned land. **Mr. Poole** said it would not be in the state's best interest to build on land they did not own.

Vote: Motion that **SB 432 BE AMENDED SB043201.agp. Motion carried unanimously.**

Motion: **SEN. HARRINGTON moved SB 432 BE AMENDED SB043203.agh.**

Mr. Higgins explained this amendment would create one exemption from Title 18, Chapter 2-4. This amendment would make this bill subject to the prevailing wage.

Mr. Poole said in his opinion, the amendment would not harm any project that might be the result of this bill.

SEN. TAYLOR said this amendment is fine as long as it does not change the procurement process.

Mr. Higgins said this amendment would affect the construction part of the project - it would require they pay the prevailing wage as required by the Little Davis Bacon Act.

{Tape : 1; Side : A; Approx. Time Counter : 0}

SEN. TAYLOR asked if amendment would affect the project, if the Air Force comes in and they have airmen working on the project. (Airmen are not paid the prevailing wage under the Little Davis Bacon Act.) **Mr. Higgins** said Air Force technicians are paid on a different scale. He felt those individuals that are involved with the construction of the structure would be paid the prevailing wage. **Mr. Poole** said his understanding of this

provision under Title 18 deals strictly with the construction of the facilities. It would require Little Davis Bacon wages for the construction part of the project.

Vote: Motion that **SB 432 BE AMENDED SB043203.agh.** Motion carried unanimously.

SEN. JERGESON said his concern about the language regarding procurement goes far beyond the prevailing wage. He suggested all the members of this committee read Title 18. He asked the committee if our taxpayers would want these projects to be exempt from the competitive bidding process. He passed out an article about the building of the Capitol Building
EXHIBIT (frs86sb0432a03).

REP. JEFF MANGAN had a question about exempting these aerospace companies - Page 2, Line 20-21. **Mr. Poole** said they lost the Bigelow project because of the procurement process. He said Mr. Bigelow owned his own construction company and he wanted to use his company. The only way that could have been done was if he would not have been subjected to the procurement process. He agreed the procurement process does have requirements built in it, that would prevent people from not following the rules. He said the people he deals with at the DOC would never do anything that would not be in the best interest of the State of Montana. He suggested they could have an independent architect look at the building plans.

SEN. BOHLINGER asked if the DOC would have oversight on these projects as stated on page 2, line 13-21. **Mr. Poole** said the DOC oversees every contract they take.

SEN. BOHLINGER asked **SEN. JERGESON** if his concerns had been met.

SEN. JERGESON said his concerns had not been addressed and now he had even more concerns. He said the testimony from **Mr. Poole** regarding a developer, who made certain demands and the law did not allow for those demands, therefore, we decide to change the law, concerned him very much.

SEN. TAYLOR said the bonding counsel makes the decision about the projects, along with the Board of Investments. He said he is not against procurement, but there is a time in industry when we need to change. He added we need to change in order to be competitive with other states and most states do not have procurement laws.

SEN. BOHLINGER said much of the success in life depends on timing.

{Tape : 1; Side : B; Approx. Time Counter : 0}

REP. MANGAN said he wanted to make sure all the necessary steps would be taken so that all the specifications would be met.

SEN. TAYLOR asked if we need more language in the bill to be sure all the necessary procedures are followed. He said he thought it was already in law that the Bond Counsel, Board of Investments, and Department of Commerce must approve the projects. **Mr. Poole** said there are three steps in this process that must be met before the bonds are sold. He said it would be okay to put language in the bill that would have the building plans reviewed by a state architect.

MOTION/VOTE: **REP. MANGAN** MOVED SB 432 BE AMENDED after the word "department" on page 2, line 19, by adding the following "A REVIEW OF THE PLANS AND SPECIFICATIONS OF THE INFRASTRUCTURE BY THE ARCHITECTURE AND ENGINEERING DIVISION OF THE DEPARTMENT OF ADMINISTRATION." Motion that SB 432 BE AMENDED carried unanimously.

REP. MANGAN asked if the appropriation language regarding the joint rule had been addressed. **Mr. Higgins** said the language in the bill does not affect the joint rule.

Motion/Vote: **SEN. TAYLOR** moved that SB 432 DO PASS AS AMENDED. Motion carried 5-1 with **REP. MANGAN** voting no.

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. JOHN C. BOHLINGER, Chairman

JEANNE FORRESTER, Secretary

JM/JB/JF

EXHIBIT (frs86sb0432aad)